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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,623	05/15/2001	Stephen K. Vernon	15-0259	8013
26294	7590	04/11/2006	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			FERRIS, DERRICK W	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/854,623

Applicant(s)

VERNON, STEPHEN K.

Examiner

Derrick W. Ferris

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 16, 17 and 29.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 3-7, 10, 19 and 21-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see comments below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


DERRICK FERRIS
PATENT EXAMINER

The examiner maintains the grounds for the finality of the Office action as stated in the Final Office action filed 1/23/2006 at paragraph 4 on page 1. However, the correct reference to the MPEP should be 706.07(a) and not 706.06(a) and in particular the rejection is made final as necessitated by applicant's amendment which is consistent with current practice. In particular, applicant failed to address why the claims were amended on 1/11/2005. Should the claims not have been amended then the instant rejection would not have been made final. However, since claims were amended the grounds for final rejection are proper since the grounds are still necessitated by an amendment.

For the Okamoto reference and claims 1, 3 and 22, determining the amount of time the selected data is stored in the memory buffers is based on an amount of delay stored in a configuration table is taught as the scheduled transmission times for a packet which is stored in a content-addressable memory 23, see e.g., paragraph 0045 on page 3. In particular, a scheduled transmission time is the time that a packet is released from a buffer as admitted by applicant (see applicant's remarks first full paragraph on page 8 filed 3/29/2006). A release time is a delay time given a reasonable but broad interpretation in view of applicant's specification since the packet is delayed until it is released at the specified time. Thus the transmission time is the delay as claimed. The configuration table is the first and second tables including the same-time transmission packet management table 22 which also use the CAM 23, see e.g., figure 7. In particular, note that the CAM table links with the management tables stored in packet buffer section 20 thus forming a configuration management table as a whole. In addition, as to claim 19, the packets are delayed based on the flow number which is considered "selected data", see e.g., paragraph 0020 on page 2 (i.e., each flow has a separate delay).

For the Kohzuki reference, and claims 1, 3, 10 and 22, the packet delay is stored in the scheduled transmission time storage 12, see e.g., column 6, lines 16-55. In particular, a scheduled transmission time is the time that a packet is released from a buffer as admitted by applicant (see applicant's remarks first full paragraph on page 8 filed 3/29/2006). A release time is a delay time given a reasonable but broad interpretation in view of applicant's specification since the packet is delayed until it is released at the specified time. The times are further fixed based on the time set in the scheduler thus meeting the claim limitation (i.e., since the time is stored the time is fixed). Furthermore, assuming the packet is high priority and the proper flags are set then the packet is further scheduled on time also meeting the claim limitation. How a fixed delay is set is not further recited in the claims. As to claim 6, the release times are stored in the scheduled transmission time storage 120 and the packets are stored in storage 122 which forms time storage 12 (see figure 7 where both blocks are in the same memory) thus meeting the further limitation of a plurality of memory buffers. As to claim 21, a packet generates the control signals thus further meeting the claim limitation.